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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/236,373	01/25/1999	BRUCE A. BUHLER	71-673-1	1565

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STEVEN W WEINRIEB  
SCHWARTZ 7 WEINRIEB  
2001 JEFFERSON DAVIS HWY  
CRYSTAL PLAZA ONE SUITE 1109  
ARLINGTON, VA 22202

[REDACTED] EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
3743	17

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/236,373	BUHLER, BRUCE A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	CARL D. PRICE	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 June 2002.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 and 5-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 and 5-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

**Reissue Application**

**Amendments to claims in a Reissue Application:**

An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression "amended," "twice amended," etc., should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (d) of this section, except that a patent claim or added claim should be canceled by a statement canceling the claim without presentation of the text of the claim.

All amendment changes must be made relative to the patent to be reissued. Pursuant to 37 CFR 1.173(d), any such changes which are made to the specification, including the claims, must be shown by employing the following "markings:"

- (A) The matter to be omitted by reissue must be enclosed in brackets; and
- (B) The matter to be added by reissue must be underlined, except for amendments submitted on compact discs (pursuant to 37 CFR 1.96 for computer printouts or programs, and 37 CFR 1.825 for sequence listings). Matter added by reissue on compact discs must be preceded with "U>" and end with "<\U>" to properly identify the material being added.

**Continuing Obligation under 37 CFR 1.56**

Applicant is reminded of the continuing obligation under 37 CFR 1.56 to timely apprise the Office of any litigation information, or other prior or concurrent proceeding, involving Patent No. 5,755,568, which is material to patentability of the claims under consideration in this reissue application. This obligation rests with each individual associated with the filing and prosecution of this application for reissue. See MPEP §§ 1404, 1442.01 and 1442.04.

**Response to Arguments**

Applicant's arguments filed 06/20/2002 have been fully considered but they are not persuasive.

Claims 1-3 and 5-26 are currently present in the application and have been examined.

Claim 4 has been cancelled.

The assignees offer to surrender the original patent is noted.

It is noted that applicant's response filed 06-20-2002 has failed to address the objection to the application under 37 CFR '1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent.

**Drawings**

With regard to the examiner's objection to the drawings under 37 CFR 1.83 (a), applicant contends that:

**"it is respectfully submitted that the objection to the specification and previously filed amendment is not proper in view of the fact that the original specification notes, for example, at Column 3, lines 43-46, that the orifices produce flames at an angle of, for example, 20-35 ° away from the plane of the circular section of the torch tip. It is therefore submitted that such recitations are both explicitly and implicitly supported by the original specification."**

The examiner does not disagree that the original specification, at Column 3, lines 43-46, describes an angular orientation of flames produced at orifices of the disclosed tip head. The original specification states:

As an example of the invention, but not otherwise as a limitation thereon, with a tip usable for soldering pipes of 1/4 to 7/8 outer diameter, the minimum linear spacing of the tip head ends (gap) would be about 11/16 inches and the flame at each orifice would produce a flame at an angle away from the cutting plane of the circular section of the tip, at an angle of about 20 to 35 degrees. This keeps the flame from overheating the tip while it is soldering the pipe. The tip orifices are about 0.020 to 0.030 inches in diameter. For larger diameter tubes, there would be provided a tip head having its orifices at a greater minimum spacing from point 45 and advantageously would have more than three orifices, would be a greater arcuate length and a greater linear spacing between terminal ends 38, 39 than that used for soldering pipes of 7/8 inch outer diameters.

Whether "implicitly" or "explicitly" supported by the original specification, applicant is required under 1.83(a) show every feature of the invention specified in the claims. Indeed, applicant is advised that any structural detail that is of **sufficient importance to be described** should be shown in the drawing. (Ex parte Good, 1911 C.D. 43, 164 O.G. 739 (Comm'r Pat. 1911).)

In regard to applicant's statement that "The drawings will be accordingly corrected upon the indication of allowance." Applicant is reminded that proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. **The objection to the drawings will not be held in abeyance.**

**Applicant's Remarks**

Applicant has amended the claims to include limitations not previously considered in combination with the combination of elements previous set forth in the claims. In particular, the claims now more specifically state that the "... outlet orifices are disposed so as to thereby project flames outwardly from said flame outlet orifices at a predetermined angle...". The phrase "outwardly from the flame outlet orifices" now more clearly states orientation of projected flames as being "outwardly from said flame outlet orifices" which are claimed to be angularly oriented to open toward a single axial point position which is disposed within a second plane.

Applicant argues that the prior art of record shows and discloses a "tip head or the equivalent thereof has an arcuate extent which is substantially beyond 280°". Applicant contends the teachings presented by the prior art of record are not the same as the arcuate extent of the tip head, stated in the claims as amended, "as being within the range of 240 ° - 280 ° so as to facilitate the insertion of the member to be heated into the interior of the tip head through a side portion of the tip head". It is noted that the invention as expressed in the amended claims states, in claim 1 for example, that the tip head has "a substantially arcuate configuration extending angularly between the terminal ends about an axis through an angle of at least about 240 ° , and a maximum angle of about 280 ° , so as to facilitate easy positioning of the member...".  
Applicant's statement that the arcuate extent of the tip head is "within the range of 240 ° - 280 °" is not the same as the actual claim limitation of "at least **about** 240 °, and a maximum angle of **about** 280 °". Regarding the arcuate extent of the torch tip, applicant's attention is directed to the prior art reference of Nis et al (newly cited) which provides support for the examiner's

position that a person having ordinary skill in the art would, according to design concerns for a given torch and torch application, necessarily modify the arcuate length of a torch, such as in Japanese '310, Japanese '570, to accommodate the desired effect of evenly heating an article about its entire surface.

Applicant argues that prior art references of Japanese '310, Japanese '570, and Wiener et al. do not show various limitations set forth in the claimed invention.

Regarding applicant's statement that "the claims recite the fact that the outlet end of the tubular stem is connected to a middle portion of the arcuate tip head". It must be stated however that the claims as amended do not point to "**a middle portion**" as the connection location area for the tubular stem. In fact, for example, claim 1 requires "said tip outlet end of said tip stem being connected to said tip head at **a position intermediate** said terminal ends of said substantially arcuate tip head". The "**a middle portion**" stated as the factual limitation of the claim is not the same as the actual claim limitation, where the tip outlet end of the tip stem is to be to the tip head at "**a position intermediate**" the terminal ends of the substantially arcuate tip head. The examiner disagrees with applicant's characterization of the prior art Japanese '570, Japanese '570, and Wiener et al. as not showing "said tip outlet end of said tip stem being connected to said tip head at a position intermediate said terminal ends of said substantially arcuate tip head". Each of these prior art references, in the examiner's opinion, unquestionably show combustible gas tubular supply stems located intermediate, or mid way between, the torch tip terminal ends.

Applicant further argues the prior art references of Japanese ‘310, Japanese ‘570, and Wiener et al. fail to show or teach “**two of the flame orifices are disposed at terminal ends of the arcuate tip head**”. Applicant’s argument regarding the location of these flame orifices is however not commensurate with the scope of the claimed invention. Claim 1 as amended, for example, states that two of said flame outlet orifices are located “**immediately adjacent to terminal ends of the substantially arcuate tip head**” which is not the same as “**disposed at terminal ends of the arcuate tip head**” suggested by applicant. And, applicant’s suggestion that the “**disposed at**” terminal ends of the arcuate tip head is also not supported by applicant’s own disclosure which describes the terminal ends as “**closed terminal ends 38**” (column 2, line 44). The examiner disagrees with applicant’s characterization of the prior art Japanese ‘570, Japanese ‘570, and Wiener et al. as not showing “immediately adjacent to terminal ends of the substantially arcuate tip head”. Each of these prior art references, in the examiner’s opinion, unquestionably show “immediately adjacent to terminal ends of the substantially arcuate tip head”.

Applicant also argues that the prior art references of Japanese ‘310, Japanese ‘570, and Wiener et al. do not show “**a substantially complete circumferential flame array for substantially completely heating the entire circumferential extent of the member can be achieved with a minimum of three orifices ...**”. The examiner disagrees with applicant’s characterization of the prior art Japanese ‘570, Japanese ‘570, and Wiener et al. as not showing “a substantially complete circumferential flame array for substantially completely heating the

entire circumferential extent of the member can be achieved with a minimum of three orifices".

Again, applicant's attention is directed to each of Japanese '570, Japanese '570, and Wiener et al which include a minimum of three orifices.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant is reminded that rejection of claims is based on the combined teachings of JAPANESE '310 (figures 1 and 2) or JAPANESE '570 in view of WIENER (figures 2,4 and 5) and Falk et al (of record). While applicant contends that JAPANESE '310, JAPANESE '570 and WIENER do not show certain limitations of the claimed invention no analysis of the combined teachings of these references, as set forth by the examiner in the rejection of the claims under 35 USC 103, has been offered by applicant. Indeed, applicant has chosen not to the prior art reference of Falk et al which is also is relied on to form the basis of the rejection of claims 1-3 and 5-23 under 35 USC 103. It is further noted that applicant has not addressed the examiner's position that:

In regard to claims 1-3 and 5-26, since the number, relative orientation, spacing, burner arc length, etc. would depend on numerous design concerns such as the size or circumference of an article to be heated, the type of fuel burned, the amount of heat to be applied to the article heated, the flame size, the desired distribution of heat over the heated surface, etc., to space the orifices at an angle of 100 degrees, an angle of 120 degrees, less than about 280 degrees, at least about 245 degrees, attaching the stem at a point midway between a second and third orifice, etc. can be viewed as nothing more than mere matters of choice

in design absent the showing of any new or unexpected results produced there from over the prior art of record.

**Lacking the Written Consent - 37 CFR 1.172(a)**

This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

**§ 1.172 Applicants, assignees**

- (a) A reissue oath must be signed and sworn to or declaration made by the inventor or inventors except as otherwise provided (see §§ 1.42, 1.43, 1.47), and must be accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent, but a reissue oath may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. All assignees consenting to the reissue must establish their ownership interest in the patent by filing in the reissue application a submission in accordance with the provisions of § 3.73(b) of this chapter.  
(b) A reissue will be granted to the original patentee, his legal representatives or assigns as the interest may appear.

**§ 3.73 Establishing right of assignee to take action.**

- (b)(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Commissioner. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:  
(i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment). The documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office; or  
(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).  
(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:  
(i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or

(ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

**Surrender of the Original Patent**

It is noted that this reissue application was filed with the required offer to surrender the original patent or, if the original is lost or inaccessible, an affidavit or declaration to that effect. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

**Oath/declaration is defective**

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

- 1) The declaration must be signed by the inventors when the claims have been broadened.
- 2) The inventor's residence, mailing address and country of citizenship have not been provided.

**Claims Rejected - Defective Declaration**

Claims 1-3 and 5-26 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Applicant argues that the prior of record fails to show features of the invention now set forth in the amended claims. In particular, applicant states that in the present invention “the arcuate extent of the tip head is now claimed as being within the range of 240°- 280° so as to facilitated the insertion of the member to be heated into the interior of the tip head through a side portion of the tip head”. Prior art references such as Weiner et al (figure 5), Wetzler, Japanese ‘129 (JP 63-55129), Japanese ‘524 (JP 6-313524), Japanese ‘917 (JP 7-145917), Japanese ‘310 (JP 56-142310), Japanese ‘609 (JP 56-77609) are either relied on to directly address the limitations of applicant’s invention as now expressed in the amended claims, or are included for review by applicant as prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

### Drawings

#### **§ 1.83 Content of drawing.**

(a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ports being angularly oriented to

generate flames extending from first to a second plane, etc. and the flames projecting outwardly with respect to the first plane to achieve heating along the second plane (see, for example, the last paragraph of claim 1 (amended)) must be shown or the feature(s) canceled from the claim(s). These structural details are essential for a proper understanding of the disclosed invention since applicant has amended the claims to include these limitations in an attempt to distinguish the claimed invention over the prior art of record. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

**(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.**

Claims 1-3 and 5-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JAPANESE '310 (figures 1 and 2) or JAPANESE '570 in view of WIENER (figures 2,4 and 5), Lynch et al (of record) and Falk et al (of record).

JAPANESE '310 (newly cited) and JAPANESE '570 (of record) disclose the invention substantially as set forth in the claims with possible exception to the curve of the torch head extending through between 240 and 280 degrees, the torch head having separate fuel gas and oxygen supply passages therein and control means on the torch head and associated with each of the fuel gas and oxygen passages to selectively block the flow there through.

JAPANESE '310 and JAPANESE '570 show and/or disclose torch heads and handles having separate fuel gas and oxygen supply passages therein and control means on the torch head and associated with each of the fuel gas and oxygen passages to selectively block the flow there through. Japanese '310 includes a tip stem (4) communicating with a fuel/oxygen passage and connected to an arcuate shaped tip head (Figures 1,2) and having at least a first, second and third angularly spaced orifices (2) which open toward a common point. And, JAPANESE '310 discloses and shows flames directed angularly from a first burner head plane to a second heater member intersecting plane (figure 2). JAPANESE '570 shows at least a first, second and third angularly spaced orifices (2) which open toward a common point.

WIENER ET AL teaches (figure 5; column 3, line 69 - column 4, line 2 and column 4, lines 60-72), from the same torch head field of endeavor as JAPANESE '310 and JAPANESE

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570, selectively forming the semi-circular segment (52) of the burner head to accommodate, through an arcuate distance to define a gap to facilitate the insertion of the member to be heated into the interior of the tip head through a side portion of the tip head.

Nis et al teaches (see column 3, line 64 - column 4, line 5), from the same torch head field of endeavor as JAPANESE '310, JAPANESE '570, that:

FIG. 5 shows a side view of an exemplary nozzle plate 16. All of the interleaved grooves 32 and 36 in groups 29 and 29' are radially directed at common line 81 while the slots in groups 30, 30' and 31, 31' are radially directed at the common lines 82 and 83, respectively. Common line 82 is on the centerline of the tube 90 while common lines 81 and 82 are on the outer surface of the tube. Although each of the three groups are directed towards different common lines in the exemplary embodiment it **may be advantageous to direct the grooves of several groups at the same common line when the number of groups or the size of the tube increases.**

And,

The instant torch 10 is efficient and relatively inexpensive to fabricate. Additionally, the torch 10 may be repaired simply by replacing any of the three basic components (i.e., the outer members 12 and 14 and the nozzle plate 16). Furthermore, **the heat zone and flame pressure areas provided by the instant torch 10 may be modified by simply changing the size of the grooves 32 and 36 and/or the thickness of the nozzle plate 16 as well as the number of groups of grooves.**

And,

"Although the exemplary torch uses an oxygen-hydrogen mixture, other gas combinations such as methane, propane or the like can be used. Additionally, the exemplary embodiment depicts the use of three groups of grooves. **However, the number of groups and their arcuate spacing may be adjusted to alter the width of the heat zone.** The instant torch 10 having three arcuately spaced groups of grooves provided a heat zone having approximately one-half the length (i.e., 1.25" to 2.5") of hot zones generated by the torch shown in U.S. Pat. No. 4,401,267. "

And,

**"It is to be understood that the embodiments described herein are merely illustrative of the principles of the invention. Various modifications may be made thereto by persons skilled in the art which will embody the principles of the invention and fall within the spirit and scope thereof. For instance, the torch 10 is arranged to provide an arcuate surface of approximately 180 degree., however the arc can be less than or greater than 180.degree. and may be 360 degrees forming an annulus through which a tube 90 may pass.**

Falk et al teaches, from the same torch head field of endeavor as JAPANESE '310, JAPANESE '570, forming a integral torch head and handle tube (11) to include separate fuel gas and oxygen supply passages (21,25) therein and control means (40,55) on the torch head and associated with each of the fuel gas and oxygen passages to selectively block or control the flow there through. Falk et al includes a tip stem (29) communicating with the fuel and oxygen passages and connected to a tip head (34) having a flame orifice.

In regard to claims 1-3 and 5-26, for the purpose of facilitating the insertion of the member to be heated into the interior of the tip head, it would have been obvious to a person having ordinary skill in the art to dimension the arcuate dimensions of JAPANESE '310 and JAPANESE '570 to accommodate passage of the member to be heated through a side portion of the tip head, in view of the teaching of WIENER ET AL, or in view of the teaching of Nis et al.

And, for the purpose of forming an integral torch head and handle tube, it would have been obvious to one with ordinary skill in the art to modify the torch head and handle of JAPANESE '310 and JAPANESE '570, to include a integral torch head and handle tube having separate fuel gas and oxygen supply passages therein and control means on the torch head/handle tube associated with each of the fuel gas and oxygen passages to selectively block or control the

flow there through, in view of the teaching of Falk et al. In regard to JAPANEE '570, in particular, it would have been obvious to a person having ordinary skill in the art to modify the gas ports to be in the form of a single row of ports, in view of the teaching of JAPANESE '310.

Also, in regard to claims 1-3 and 5-26, since the number, relative orientation, spacing, burner arc length, etc. would depend on numerous design concerns such as the size or circumference of an article to be heated, as taught by Nis et al, the type of fuel burned, the amount of heat to be applied to the article heated, the flame size, the desired distribution of heat over the heated surface, etc., to space the orifices at an angle of 100 degrees, to form the tip to have an arcuate extent of 120 degrees, less than about 280 degrees, at least about 245 degrees, attach the stem at a point midway between a second and third orifice, etc. can be viewed as nothing more than mere matters of choice in design absent the showing of any new or unexpected results produced there from over the prior art of record.

Also, the recitation "for heating a member attendant a metal bonding operation" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hiram*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). And, the claim limitation that heating is "within and along said second plane, attendant a metal bonding operation to be achieved along said second

plane.”, is a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

**Conclusion**

See the attached PTI FORM 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

**USPTO CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30 am-3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1148/0858.



CARL D. PRICE  
Primary Examiner  
Art Unit 3743

cp  
August 7, 2003